

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application of the City of  
Redwood Falls to Extend its Assigned Service  
Area into the Area Presently Served by  
Redwood Electric Cooperative

ISSUE DATE: November 14, 2005

DOCKET NO. E-135, 298/SA-05-1274

ORDER GRANTING INTERIM SERVICE  
RIGHTS

**PROCEDURAL HISTORY**

On August 3, 2005, the City of Redwood Falls filed a petition under Minn. Stat. § 216B.44 stating its intention to exercise its right to extend its assigned service area to include several annexed areas that lie within the assigned service area of Redwood Electric Cooperative. The petition asked the Commission to adjust the City's service area boundaries to include these areas and to open a contested case proceeding to determine appropriate compensation to the Cooperative for service rights to the areas.

The City also asked the Commission to grant the City the right to serve new points of delivery within one of the annexed areas, the Prairie Knoll Addition, while compensation was being determined, subject to three conditions the Commission has imposed in other cases.

The Cooperative concurred in the request for a contested case proceeding to set compensation for service rights to the annexed areas and opposed the City's request to serve new points of delivery within the Prairie Knoll Addition while compensation was being determined.

On September 19, 2005, the Minnesota Department of Commerce (the Department) filed comments, concurring in the parties' request for a contested case proceeding and taking no position on which utility should serve the Prairie Knoll Addition while compensation was being determined.

On November 3, 2005, the matter came before the Commission.

**FINDINGS AND CONCLUSIONS**

## **I. Statutory Background**

In 1974 the Minnesota Legislature determined that the orderly development of economical statewide electric service required granting electric utilities exclusive service rights within designated service areas:

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis.

Minn. Stat. § 216B.37.

The Commission was required to establish assigned service areas for all electric utilities by April 12, 1975 and to prepare official service area maps showing the boundaries of the service areas established. To expedite this process, the statute encouraged utilities to reach agreements on service area boundaries and to submit them to the Commission for approval and ratification. Minn. Stat. § 216B.39, subd. 4. That is how the service area boundaries between these two utilities were set.

The Legislature recognized that service areas would require adjustment over time, especially as cities and towns with municipal utilities grew. The Legislature therefore established a procedure, codified at Minn. Stat. § 216B.44, to allow municipal utilities to acquire portions of other utilities' service areas within their city limits. That statute authorizes and encourages municipal utilities and the utilities they are displacing to agree on compensation for areas municipal utilities are acquiring. If they are unable to agree, however, the statute authorizes either party to seek a compensation determination from the Commission.<sup>1</sup>

It also authorizes the Commission to allow the municipal utility to serve new customers in the area being acquired while compensation is being determined, if the Commission finds that new service extensions by the assigned utility would not be in the public interest. Otherwise, the assigned utility is to continue serving old and new customers until compensation has been determined and paid.

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<sup>1</sup> Minn. Stat. § 216B.44 (b).

## **II. Factual Background**

Prairie Knoll Addition, the area to which the City seeks interim service rights, is owned by the City and is being developed by the City as a residential subdivision. The City extended water and sanitary sewer services to the area in 2004; it is in the process of constructing streets, curbs, gutters, and a storm water drainage system in the area. It will install street lights when those projects are complete.

The area comprises sixteen residential lots, one commercial lot, and two outlots. The City is actively marketing the residential lots and plans to market the commercial lot in the spring, although recent inquiries about the commercial lot may accelerate that schedule.

The City states that it is committed to providing electric service to the area and that it seeks interim service rights to permit it to install its own facilities from the start, instead of acquiring Cooperative facilities at the close of the compensation proceeding. It proposes to extend interim service to the area under three conditions similar to those the Commission has imposed in past cases granting interim service rights to municipal utilities:

- (1) In the event service rights revert to the Cooperative and cable or other facilities installed by the City fail to meet Cooperative standards, the Cooperative need not compensate the City for the cable or facilities.
- (2) In the event service rights revert to the Cooperative, the City will hold harmless, defend, and indemnify the Cooperative against third-party claims based upon improper installation or defective materials.
- (3) The City will escrow \$1,500 per acre as it extends interim service into the Prairie Knoll Addition.

The Cooperative opposed interim service by the City, stating that the facilities it would install to serve the area would be compatible with the City's system, that the eventual transfer of those facilities to the City could be done economically and efficiently, and that there was a reasonable possibility the City, which has never before purchased service rights from the Cooperative, would not complete the acquisition.

## **III. Commission Action**

The Commission finds that it would not be in the public interest for the Cooperative to extend service to new customers in the Prairie Knoll Addition while compensation is being determined. It will grant the City's petition for interim service rights, subject to the three conditions set forth above.

In determining the public interest in interim service cases, the Commission must balance the risks and benefits of leaving service rights with the assigned utility against the risks and benefits of allowing the municipal utility to serve new customers. In this case there are fewer risks and more benefits in allowing the City to serve new customers in the Prairie Knoll Addition than in allowing the Cooperative to serve them.

The factors in the risk/benefit equation differ in every interim service case. Here, one critical factor is that the City is highly unlikely to abandon its pursuit of permanent service rights to the Prairie Knoll Addition. The City owns the area and is developing it at City expense as part of its long-term development plan; providing electric service to the area is an integral part of that plan. This level of commitment lessens the concern that the City will fail to complete this acquisition, as does the City's previous completion of an acquisition of service rights from Northern States Power Company.<sup>2</sup>

Another important factor is that this is not a situation in which it is impossible to avoid the system-integration challenges posed by intermingling the customers and facilities of the assigned utility with the customers and facilities of the acquiring utility. Here the assigned utility has no existing customers. Prairie Knoll is a new subdivision, and serving it will require a new distribution system. It makes sense for the utility that will provide permanent service to design and construct this new distribution system, to ensure the most seamless possible integration with that utility's system.

In most cases it is not clear which utility will provide permanent service, giving the edge to the assigned utility, which the statute requires to continue extending service in the absence of a showing that new extensions would not be in the public interest.<sup>3</sup> Again, in this case the high level of certainty that the City will complete the acquisition permits the assumption that the permanent service provider will be the City.

Further, although service can normally be transferred from one utility to another with minimal inconvenience to customers, service transfers always involve *some* inconvenience, because they nearly always involve an outage. Similarly, changing electric utilities is inconvenient for all customers and confusing for some. Customers must adjust to new rates and new billing practices, send payments to a new address, and accommodate new meter-reading schedules. Again, given the high likelihood that the City will complete this acquisition, the public interest favors permitting the City to serve these customers from the start.

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<sup>2</sup> *In the Matter of the Application of the Redwood Falls Public Utilities Commission to Extend its Assigned Service Area into the Area Presently Served by Northern States Power Company*, Docket No. E-002, 198/SA-96-859, Order Accepting Settlement (February 4, 1998).

<sup>3</sup> Minn. Stat. § 216B.44 (c).

Finally, the additional safeguards offered by the City – indemnifying the Cooperative against defects in installation or materials, waiving compensation for facilities that fail to meet Cooperative standards, and escrowing \$1,500 per acre as service is extended – will adequately protect the Cooperative should the City renege, by essentially restoring the Cooperative to its current position.

For all these reasons, the Commission will grant the City's petition for authority to serve new points of delivery in the Prairie Knoll Addition during the pendency of the compensation proceeding.

### **ORDER**

1. The Commission grants the City's petition for interim service rights to the Prairie Knoll Addition, subject to the following conditions:
  - (a) In the event service rights revert to the Cooperative and cable or other facilities installed by the City fail to meet Cooperative standards, the Cooperative need not compensate the City for the cable or facilities.
  - (b) In the event service rights revert to the Cooperative, the City shall hold harmless, defend, and indemnify the Cooperative against third-party claims based upon improper installation or defective materials.
  - (c) The City shall escrow \$1,500 per acre as it extends interim service into the Prairie Knoll Addition.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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